

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2386 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SOHANLAL KRISHNAJI KHATIK

Versus

DISTRICT SUPPLY OFFICER

Appearance:

MR BA SURTI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1 to 3

M/S THAKKAR ASSOC. for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 15/10/97

ORAL JUDGEMENT

Rule.

By consent of the learned Counsel for the parties, Rule is heard today.

2. This petition challenges the decision of the State Government rendered on March 17, 1997 setting aside

the order dated June 26, 1996 passed by the Collector, Surat in favour of the petitioner for grant of authorisation for running a fair price shop.

3. The petitioner as well as respondent no.4 had applied for authorisation for fair price shop and other applications were placed before the Advisory Committee. The comparative statement giving particulars about the petitioner at Sr.No.1, respondent no.4 at Sr.No.2 and two other candidates are found at Annexure A to the petition. According to the petitioner, as per the Government Scheme priority is to be given to the persons belonging to the Scheduled Castes and Scheduled Tribes and if such persons are not available then persons belonging to Baxi Panch Community are to be given priority. The Committee recommended the names of the petitioner and respondent no.4 but only one authorisation was to be given and the District Supply Officer passed order dated April 16, 1996 in favour of respondent no.4. That decision was challenged by the petitioner before the Collector who passed the order dated June 26, 1996 at Annexure B to the petition in favour of the petitioner. The Collector relied on the recommendations of the Committee and the fact that the petitioner was placed at Sr.No.1 of the list of applicants selected by the Committee. The Collector, therefore, set aside the order passed by the District Supply Officer in favour of respondent no.4 and directed issuance of authorisation in favour of the petitioner.

Respondent no.4 carried the matter in revision before the State Government. When the petitioner came to learn about the aforesaid revision application at the stage of hearing of interim stay application, the petitioner appeared and submitted his written reply and objected to the grant of any interim stay. It appears that no orders were passed on the interim stay application, but thereafter the State Government heard the revision application and without issuing any notice to the petitioner passed the order dated March 17, 1997 (Annexure C to the petition) allowing the revision application setting aside the order of the Collector and restoring the order passed by the District Supply Officer.

5. Aggrieved by the aforesaid order the petitioner has filed the present petition on the ground that although the order of the Collector was in favour of the petitioner, the petitioner was not joined as a party to the revision application and the State Government allowed the Revision application without issuing any notice to

the petitioner or without giving any opportunity of being heard to the petitioner. The learned advocate for the petitioner has submitted that the aforesaid action has, therefore, been taken in violation of the principles of natural justice and the petitioner suffered a clear prejudice because the State Government has set aside the order of the Collector on the ground that the petitioner's brother was already having an authorisation for running a fair price shop. If the petitioner had been given an opportunity of being heard the petitioner could have pointed out that such an objection was never raised earlier and could not have been raised for the first time in a revision application and that in any view of the matter the brother of the petitioner is not staying with the petitioner but he is staying separately and that the definition of "family" in the Scheme for authorisation of fair price shop also provides that if the brother is staying separately, he cannot be considered to be a part of the family for the purpose of the scheme.

6. Mr. Gharania, learned AGP, and Mrs. Pahwa for respondent no.4 have opposed the petition and supported the order passed by the State Government.

7. Having heard the learned Advocates for the parties it appears that since the revisional order was passed by the State Government without the petitioner having been joined as a party to the revision application and without the petitioner being given reasonable opportunity of defending the order passed by the Collector in his favour, the order is obviously illegal and void and deserves to be set aside. It is also required to be directed that the petitioner shall be joined as a party to the revision application and the State Government shall hear and decide the revision application afresh after issuing the notice to the petitioner and after giving him reasonable opportunity of being heard. At the hearing of the revision application, it will be open to the petitioner and respondent no.4 to urge all the contentions available to them.

8. In view of the fact that the revisional order dated 17-3-1997 was not stayed by this Court at the time of issuance of the notice, respondent no.4 has been running the fair price shop. Since the revisional order is being set aside today, the ordinary consequence would have been that the authorisation granted in favour of respondent no.4 would also have been set aside. But the unfortunate consequence of such a course of action would have been that the village people who are purchasing

articles from the fair price shop would be put to hardship as there is no other fair price shop in the area. In order to obviate this hardship to the villagers it is directed that the revision application shall be heard and decided by the State Government latest by November 30, 1997 and the status quo as on today shall continue till disposal of the revisional application by the State Government. These directions are given on the assurance of the learned advocates for the parties that their respective clients and their counter parts appearing at the hearing of the revision application would cooperate with expeditious hearing.

9. The petition is accordingly allowed on the short ground that the revisional order was passed in contravention of the principles of natural justice which has caused serious prejudice to the petitioner. Since this Court has not gone into the merits of the dispute between the parties, the revisional authority shall hear and decide the matter in accordance with law without being influenced by any observations made in this order but after giving an opportunity of being heard both to the petitioner and to respondent no.4. The revision application shall be heard and decided by November 30, 1997.

10. Rule made absolute to the aforesaid extent with no order as to costs.

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